

1  
2                   **IN THE UNITED STATES DISTRICT COURT FOR THE**  
3                   **WESTERN DISTRICT OF MISSOURI**  
                  **SOUTHERN DIVISION**

4 **UNITED STATES OF AMERICA,**            ) **Case No. 17-03016-01-CR-S-RK**  
  )  
5                   **Plaintiff,**            ) **Springfield, Missouri**  
  ) **November 15, 2017**  
6 **v.**                                        )  
  )  
7 **ANTHONY DUNLAP,**                    )  
  )  
8                   **Defendant.**            )  
  )  
\_\_\_\_\_)

9  
10                   **TRANSCRIPT OF HEARING ON CHANGE OF PLEA**  
11                   **BEFORE THE HONORABLE DAVID P. RUSH**  
                  **UNITED STATES MAGISTRATE JUDGE**

12 **APPEARANCES:**

13 For the Plaintiff:                   Mr. James J. Kelleher  
  Assistant United States Attorney  
14                                        901 St. Louis St., Ste. 500  
  Springfield, MO 65806  
  (417) 831-4406

15 For the Defendant:                 Ms. Erica Mynarich  
16                                        901 St. Louis St., Ste. 1600  
  Springfield, MO 65806  
17                                        (417) 831-6363

18 Court Audio Operator:             Ms. Karla Berziel

19 Transcribed by:                    Rapid Transcript  
20                                        Lissa C. Whittaker  
  1001 West 65th Street  
21                                        Kansas City, MO 64113  
  (816) 914-3613

22  
23  
24  
25 Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

1 (Court in Session at 2:30 p.m.)

2 THE COURT: Calling in *United States vs. Anthony Dunlap*.  
3 The defendant appears in person along with his attorney, Ms.  
4 Erica Mynarich. The United States appears by Assistant United  
5 States Attorney, Mr. Jim Kelleher. This matter is set this  
6 afternoon for a change of plea to Count One and Count Two of the  
7 Indictment returned against this defendant on January 18<sup>th</sup>, 2017.  
8 And, Ms. Mynarich, would you mind pulling the directional  
9 microphone in front of Mr. Dunlap. Yeah. And also for yourself.  
10 Again, the Court can hear you all fine but the transcriptionist  
11 sometimes will have difficulty hearing. Mr. Dunlap, you have  
12 signed a consent to have these proceedings for a plea of guilty  
13 before a Magistrate Judge, with the understanding that a United  
14 States District Judge, a judge of higher jurisdiction, will keep  
15 your case for acceptance of the plea of guilty and sentencing.  
16 Even though you signed this consent you have a right, if you  
17 wish, to appear before a United States District Judge, a judge of  
18 higher jurisdiction, for these proceedings. At any appearance  
19 before the District Judge, you're presumed innocent until such  
20 time, if ever, as the Government establishes your guilt beyond a  
21 reasonable doubt to the satisfaction of the judge or jury. You  
22 always have a right to be present and to confront and cross-  
23 examine witnesses. You have a right to use the power of the  
24 court to subpoena evidence on your behalf and you have a right to  
25 testify or not testify as you would choose. And if you chose not

1 to testify that would not be held against you as that is your  
2 right. If, after understanding the charges against you, the  
3 range of punishment, if convicted, and your right to appear  
4 before a District Judge, if you wish, you may waive or give up  
5 that right and proceed this afternoon before the Magistrate  
6 Judge. As I indicated, you have signed such a consent. Do you  
7 understand that you have a right to appear before a United States  
8 District Judge, a judge of higher jurisdiction, for these  
9 proceedings?

10 MR. DUNLAP: Yes.

11 THE COURT: And is it your desire to give up that right  
12 and proceed this afternoon before the Magistrate Judge?

13 MR. DUNLAP: You, right?

14 THE COURT: Yes, sir.

15 MR. DUNLAP: Yes.

16 THE COURT: All right. Thank you. Mr. Dunlap, do you  
17 understand the charge against you in Count One of the Indictment  
18 in this case?

19 MR. DUNLAP: What's the charge in Count One?

20 THE COURT: Count One charges that on or about January  
21 3<sup>rd</sup> of 2017, within in Greene County, in the Western District of  
22 Missouri, the defendant by force, violence and intimidation, did  
23 take from the person or presence of another, United States  
24 currency -- oh, you've got a copy of the Indictment there. Thank  
25 you, Mr. Kelleher.

1 (Off Record Attorney-Client Discussion)

2 MR. DUNLAP: Yes, sir.

3 THE COURT: Okay. And do you understand that if  
4 convicted of the charge in Count One, that the maximum penalty  
5 the court may impose is not more than 20 years imprisonment, not  
6 more than a \$250,000 fine, not more than three years supervised  
7 release, and a \$100 mandatory special assessment?

8 MR. DUNLAP: Yes, Your Honor.

9 THE COURT: And to the charge in Count One, how do you  
10 wish to plead, guilty or not guilty?

11 MR. DUNLAP: Guilty.

12 THE COURT: And, Mr. Dunlap, do you understand the  
13 charge against you in Count Two of the Indictment in this case?

14 MR. DUNLAP: Yes, Your Honor.

15 THE COURT: And for the record, Ms. Mynarich, attorney  
16 for the defendant, is providing a copy of the Indictment to the  
17 defendant that he's referring to during the plea colloquy. Do  
18 you understand that if convicted of the charge in Count Two, that  
19 the maximum penalty the court may impose is not more than 10  
20 years imprisonment, not more than three years supervised release,  
21 not more than a \$250,000 fine and a \$100 mandatory special  
22 assessment? Do you understand that?

23 MR. DUNLAP: Yes, Your Honor.

24 THE COURT: Now, Mr. Dunlap, there is a possibility and  
25 I know your attorney -- or I believe your attorney has discussed

1 this with you -- that you may be an armed career criminal. And  
2 if you are found to be an armed career criminal, do you  
3 understand that the range of punishment under Count Two, if that  
4 were to occur, would be that the minimum penalty the court may  
5 impose is not less than 15 years imprisonment, while the maximum  
6 penalty the court may impose is not more than life imprisonment,  
7 again, not more than a \$250,000 fine, not more than five years  
8 supervised release and \$100 mandatory special assessment. Do you  
9 understand that, if you are found to be an armed career criminal?

10 MR. DUNLAP: At Count Two?

11 THE COURT: Yes, sir.

12 MR. DUNLAP: And it doesn't relate to Count One? Or are  
13 you just asking --

14 THE COURT: No, it just relates to Count Two.

15 MR. DUNLAP: Okay. Yes, Your Honor.

16 THE COURT: And to the charge in Count Two, how do you  
17 wish to plead, guilty or not guilty?

18 MR. DUNLAP: Guilty.

19 THE COURT: Would you please raise your right hand as  
20 best you can?

21 ANTHONY DUNLAP, DEFENDANT, AFFIRMED

22 MR. DUNLAP: So help me God?

23 THE COURT: Yeah. Or you can just affirm if you don't  
24 feel comfortable -- if you'll just affirm that the answers to the  
25 questions --

1 MR. DUNLAP: I affirm that the answers that I'm going to  
2 give -- about to give will be true.

3 THE COURT: Okay.

4 THE COURT: Thank you. Mr. Dunlap, has anyone made any  
5 threat of any kind to force you to plead guilty or give up any of  
6 the other rights we've discussed this afternoon?

7 MR. DUNLAP: No, Your Honor.

8 THE COURT: Has anyone promised you anything to induce  
9 you or overcome your will to get you to plead guilty or give up  
10 any of the other rights we've discussed?

11 MR. DUNLAP: No, Your Honor.

12 THE COURT: Now, I mentioned to you that there was a  
13 supervised release term that could be imposed as to both Counts  
14 One and Two. As to Count One, it's not more than three years and  
15 as to Count Two, if you are not a career criminal, then it's not  
16 more than three years. However, as I explained to you, under  
17 Count Two if you are found to be an armed career criminal, then  
18 that supervised release term is not more than five years that  
19 could be imposed. My question for you is this, do you understand  
20 that if those terms of supervised release were imposed and then  
21 revoked for any reason, that you could be required to serve an  
22 additional term of imprisonment of not more than two years as to  
23 Counts One and Two if you are not an armed career criminal and  
24 then not more than five years on Count Two if you're found to be  
25 an armed career criminal, and if that happened, you would receive

1 no credit for any other time you had spent either in custody or  
2 on release?

3 MR. DUNLAP: Yes, Your Honor.

4 THE COURT: Do you understand that the court could  
5 impose an additional term of supervised release as to Count One  
6 and Two, and again, depending on Count Two what your supervised  
7 release term would be, which would be governed by the maximum of  
8 the statute, minus any time you'd spent in custody as a result of  
9 a violation?

10 MR. DUNLAP: Yes, Your Honor.

11 THE COURT: Do you understand that from a sentence  
12 imposed in your case that there is no parole?

13 MR. DUNLAP: Yes, Your Honor.

14 THE COURT: Do you understand that there are Sentencing  
15 Guidelines to which the District Court or sentencing court would  
16 refer to in an advisory capacity when attempting to fashion a  
17 reasonable sentence in your case?

18 MR. DUNLAP: Yes, Your Honor.

19 THE COURT: Have you discussed the guidelines with Ms.  
20 Mynarich?

21 MR. DUNLAP: Yes, Your Honor.

22 THE COURT: And do you understand them?

23 MR. DUNLAP: Yes, Your Honor.

24 THE COURT: Do you understand that the final decision as  
25 to how the guidelines are calculated and ultimately what sentence

1 will be imposed rests with the District Judge?

2 MR. DUNLAP: Yes, Your Honor.

3 THE COURT: If the District Judge would calculate the  
4 guidelines differently from what you've discussed with Ms.  
5 Mynarich, that fact would not give you the right to withdraw or  
6 change your plea of guilty. Do you understand that?

7 MR. DUNLAP: Yes, Your Honor.

8 THE COURT: Once the District Judge establishes the  
9 advisory guideline range, in some circumstances, you could be  
10 sentenced above that range and, in other circumstances, you could  
11 be sentenced below that range. And again, the judge's decision,  
12 if you disagreed, would not give you the right to withdraw your  
13 plea of guilty. Do you understand that?

14 MR. DUNLAP: Yes, Your Honor.

15 THE COURT: Now, Mr. Dunlap, you have a right to a trial  
16 by jury with all the protections that I explained to you at the  
17 beginning of these proceedings. Do you understand your right to  
18 a trial by jury?

19 MR. DUNLAP: Yes, Your Honor.

20 THE COURT: And do you understand that if the court  
21 accepts your pleas of guilty that there won't be a trial?

22 MR. DUNLAP: Yes, Your Honor.

23 THE COURT: Now I'm going to ask you about the offenses  
24 charged in Counts One and Two of the Indictment in this case. I  
25 would remind you that you are under oath. You must answer



1 truthfully. Any false answers could result in charges of false  
2 swearing or perjury. You always have the right to remain silent.  
3 And I want you to listen carefully because in just a moment I'm  
4 going to ask the attorney for the United States to state for the  
5 record the evidence that he believes he could present at trial to  
6 prove or establish your guilt beyond a reasonable doubt to the  
7 satisfaction of a judge or jury. Once he's finished, I'm going  
8 to ask you if you, in fact, did the things that he's stated for  
9 the record that he believes he can prove beyond a reasonable  
10 doubt. So I'd ask you just to listen carefully to the attorney  
11 for the United States. Mr. Kelleher.

12 MR. KELLEHER: Thank you. Had this case proceeded to  
13 trial, the Government would have established that on or about  
14 January 3, 2017, at approximately 4:30 p.m., the Bank of America,  
15 then insured by the Federal Deposit Insurance Corporation,  
16 located at 633 West Kearney Street, Springfield, Missouri, within  
17 the Western District of Missouri, was robbed by an individual  
18 later identified as the defendant, Anthony Dunlap. According to  
19 the victim teller, the defendant entered the bank and approached  
20 her teller station. The defendant seemed suspicious to the  
21 teller because he had his hoodie up covering his head. Upon  
22 reaching her station, the defendant handed the teller a piece of  
23 paper with writing on it. The teller looked at the first sign  
24 which read "Stay calm." The teller made eye contact with the  
25 defendant who looked toward his hand that was in his coat pocket.

1 The teller was afraid and believed the defendant made this  
2 gesture to indicate that he was armed. The teller removed cash  
3 from her teller drawer and placed it on the counter in front of  
4 the defendant. The defendant said, "Give me more." The teller  
5 removed more cash from her teller drawer which contained a  
6 concealed tracking device. The defendant then took the cash,  
7 stuffed it into his pockets and left the bank. An audit of the  
8 victim teller's drawer revealed that approximately \$3,910 in  
9 United States currency was taken in the robbery. After the  
10 concealed tracking device was given to the defendant, the tracker  
11 was activated and corporate security in St. Louis, Missouri, was  
12 notified of the activation. The tracking device's location  
13 information was relayed to the Springfield Police Department who  
14 were ultimately directed to the driveway of 2007 Page Street.  
15 Police officers and FBI agents arrived shortly thereafter and  
16 made contact with Crystal Tunstall who advised the police that  
17 the defendant was still within the vehicle. The officers opened  
18 the vehicle door and removed the defendant from the car. As they  
19 did so, a large amount of loose cash was dragged out with the  
20 defendant. United States currency was also located on the back  
21 floorboards of the car. The total amount recovered was  
22 approximately \$3,910. A loaded Hi-Point .40-caliber pistol,  
23 Model JCP, Serial Number 7251793, was also located on the back  
24 seat of the car. The pistol was loaded with 10 rounds of .40-  
25 caliber ammunition. The defendant was later transported to the

1 Greene County Jail where he was interviewed. The defendant  
2 indicated that he had, in fact, robbed the bank in order to  
3 obtain money to buy heroin. He indicated that his girlfriend did  
4 not know anything about the robbery. It was later revealed that  
5 the defendant had been previously convicted of second-degree  
6 robbery in the state of Missouri, a felony which is punishable by  
7 a term of imprisonment exceeding one year. The firearm in  
8 question was, in fact, manufactured outside the state of  
9 Missouri.

10 THE COURT: And was there a test done on the firearm to  
11 determine if it was operational?

12 MR. KELLEHER: The firearm was, in fact, operational.

13 THE COURT: Mr. Dunlap, you've listened to the evidence  
14 that the Government has stated that they could present at trial  
15 to prove or establish your guilt beyond a reasonable doubt. Did  
16 you, in fact, do the things that they've stated for the record  
17 that they can prove?

18 MR. DUNLAP: I agree I was present in the bank. As far  
19 as brandishing, making a gesture that I was armed, I don't agree  
20 with that. And I disagree with it being implicated that I used  
21 -- used the weapon on -- made appearance if I had a weapon. What  
22 I do recall is -- maybe the teller questioned me as, you know,  
23 where was I going to put the money. I agree that I did go in the  
24 bank and gestured I was putting it in my pocket but as far as  
25 making a gesture that I had a weapon, no, I don't agree with

1 that.

2 THE COURT: Does either party want to clarify?

3 MS. MYNARICH: I will clarify, Judge. My client admits  
4 that he went into the bank and spoke with the teller and gave her  
5 a note to give him the money. The teller told the police that he  
6 made a gesture. Her understanding of that gesture was that he  
7 might have been armed. But there was no gun brandished in the  
8 bank. And so we do -- we refuse to admit that he had any sort of  
9 firearm in the bank. Now, later, when he was found in the  
10 vehicle there was a firearm and we admit that he was in  
11 possession of that firearm that was in that vehicle. And so we  
12 admit to robbing the bank and we admit to later being in the  
13 vehicle with the weapon, the firearm, but we do not agree that he  
14 had a firearm with him inside the bank.

15 THE COURT: Is that your position, Mr. Dunlap?

16 MR. DUNLAP: Yes, Your Honor.

17 THE COURT: And, Mr. Kelleher, again, I believe your  
18 factual basis was, you know, the note was given to teller and it  
19 said "Stay calm" and that there was a gesture towards the pocket  
20 that the teller construed as being -- how do you want to  
21 characterize that?

22 MR. KELLEHER: Well, the teller believed that he might  
23 be armed. Obviously, there was no brandishing or a display of a  
24 firearm by the defendant.

25 THE COURT: All right. And you agree with that, Mr.

1 Dunlap?

2 MR. DUNLAP: Yes, Your Honor.

3 THE COURT: All right. Well, Ms. Mynarich, you've had  
4 access to the Government's discovery file in this case, have you  
5 not?

6 MS. MYNARICH: Yes, Judge.

7 THE COURT: And in your review of the discovery file,  
8 are you satisfied if put to proof, that the United States could  
9 make a submissible case as to all the elements pertaining to  
10 Counts One and Two of the Indictment as set forth in the factual  
11 basis that's been provided today?

12 MS. MYNARICH: Yes, Your Honor.

13 THE COURT: There is an adequate factual basis for the  
14 pleas of guilty to Counts One and Two. I find that the plea is  
15 voluntary and did not result from force, threats or promises.  
16 Mr. Dunlap, you are represented in this case by Ms. Mynarich.  
17 Have you had enough time to talk with her about your case?

18 MR. DUNLAP: Yes, Your Honor.

19 THE COURT: Are you satisfied with the advice that she's  
20 given you?

21 MR. DUNLAP: Yes, Your Honor.

22 THE COURT: The law requires me to ask you if this  
23 afternoon you are on any medication prescribed by a physician or  
24 any drugs or alcohol of any kind which would affect your ability  
25 to understand these proceedings?

1 MR. DUNLAP: No, Your Honor.

2 THE COURT: Understanding that and the other matters  
3 that we've discussed this afternoon, is it your desire for the  
4 court to accept these pleas of guilty?

5 MR. DUNLAP: Yes, Your Honor.

6 THE COURT: Mr. Kelleher, on behalf of the United  
7 States, do you have any other record under Rule 11 that you think  
8 I need to make?

9 MR. KELLEHER: No, Your Honor. Thank you.

10 THE COURT: Ms. Mynarich, on behalf of Mr. Dunlap, is  
11 there any further record you believe I need to make under Rule  
12 11?

13 MS. MYNARICH: No, Your Honor.

14 THE COURT: I will recommend the pleas of guilty be  
15 accepted and I will order a Presentence Investigation to be  
16 conducted by the Probation Office. Mr. Dunlap, good luck to you,  
17 sir.

18 MR. DUNLAP: Thank you, Your Honor.

19 THE COURT: With that, we'll be in recess.

20 (Court Adjourned at 2:46 p.m.)  
21  
22  
23  
24  
25

1  
2  
3  
4 I certify that the foregoing is a correct transcript  
5 from the electronic sound recording of the proceeding in the  
6 above-entitled matter.

7  
8 /s/ Lissa C. Whittaker  
Signature of transcriber

November 22, 2017  
Date